

COTTONWOOD HEIGHTS

RESOLUTION NO. 2011-46

A RESOLUTION APPROVING AN INTERLOCAL AGREEMENT WITH SALT LAKE CITY FOR FIRE HYDRANT MAINTENANCE

WHEREAS, UTAH CODE ANN. §11-13-101, *et seq.* (the “*Interlocal Cooperation Act*”) provides that any two or more public agencies may enter into agreements with one another for joint or cooperative action following the adoption of an appropriate resolution by the governing body of each participating public agency; and

WHEREAS, Salt Lake City (“*SLC*”) and the city of Cottonwood Heights (the “*City*”) are public agencies for purposes of the Interlocal Cooperation Act; and

WHEREAS, SLC provides culinary water service through its water conveyance and delivery system (the “*System*”) within certain portions (the “*Service Area*”) of the City, and the City owns certain fire hydrants and related appurtenances (collectively, the “*Hydrants*”) in the Service Area that are connected to the System; and

WHEREAS, pursuant to the authority granted in the Interlocal Cooperation Act, SLC and the City desire to enter into an “interlocal agreement” (the “*Agreement*”) whereunder SLC will provide maintenance, repair and replacement services for the City’s Hydrants; and

WHEREAS, the city council (the “*Council*”) of the City met in regular session on 29 November 2011 to consider, among other things, approving the City’s entry into the Agreement; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, the city attorney of the City has approved the form of the Agreement as required by *Utah Code Ann.* §11-13-202.5(3); and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the City’s residents to approve the City’s entry into the Agreement as proposed in order to make efficient use of the City’s resources;

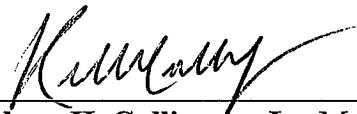
NOW, THEREFORE, BE IT RESOLVED by the city council of Cottonwood Heights that the attached Agreement with SLC is hereby approved, and that the City’s mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City.

This Resolution, assigned no. 2011-46, shall take effect immediately upon passage.

PASSED AND APPROVED this 29th day of November 2011.

COTTONWOOD HEIGHTS CITY COUNCIL



By 
Kelvyn H. Cullimore, Jr., Mayor


Linda W. Dunlavy, Recorder

VOTING:

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Gordon M. Thomas	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

DEPOSITED in the office of the City Recorder this 29^h day of November 2011.

RECORDED this 30 day of November 2011.

570147.1

INTERLOCAL COOPERATION AGREEMENT
(COTTONWOOD HEIGHTS FIRE HYDRANT MAINTENANCE)

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THIS INTERLOCAL COOPERATION AGREEMENT (COTTONWOOD HEIGHTS CITY FIRE HYDRANT MAINTENANCE), dated as of _____, 2011 (this "Agreement"), by and among SALT LAKE CITY CORPORATION, a municipal corporation of the State of Utah ("Salt Lake"), and the city of COTTONWOOD HEIGHTS, a municipal corporation of the State of Utah ("Cottonwood Heights"),

WITNESSETH:

WHEREAS, Salt Lake provides culinary water service outside of its municipal boundaries within portions of Cottonwood Heights, including the area identified on Exhibit A attached hereto, such identified area being referred to herein for purposes of this Agreement as the "Cottonwood Heights Water Service Area;" and

WHEREAS, such water service is provided by means of a water treatment, conveyance and delivery system consisting of dams, reservoirs, storage tanks, water treatment plants, raw and finished water conveyance facilities, valves, pumps, distribution pipelines and related and appurtenant facilities, operated and maintained by Salt Lake (collectively, the "System"), portions of which are situated within the Cottonwood Heights Water Service Area; and

WHEREAS, Cottonwood Heights owns (or will own) certain fire hydrants and related appurtenances in the Cottonwood Heights Water Service Area; and

WHEREAS, except as may be provided for by contract, Salt Lake has no responsibility to acquire, own, install, inspect, maintain, repair, replace, operate or otherwise manage fire hydrants situated outside of the boundaries of Salt Lake; and

WHEREAS, Cottonwood Heights desires to engage Salt Lake to provide fire hydrant maintenance, repair and replacement services for all Cottonwood Heights fire hydrants connected to the System and situated within the Cottonwood Heights Water Service Area, and Salt Lake is willing to provide such services to Cottonwood Heights; and

WHEREAS, Cottonwood Heights desires to obtain from Salt Lake a continuing supply of water sufficient to fight fires in the Cottonwood Heights Water Service Area, and Salt Lake is willing to provide with such water supply; and

WHEREAS, Salt Lake and Cottonwood Heights desire to document their mutual understanding with respect to the foregoing, under authority of the Utah Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code Annotated (the "Interlocal Act"),

NOW THEREFORE, for and in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby agree as follows:

SECTION 1. Fire Hydrant Maintenance. (a) Salt Lake agrees to provide for Cottonwood Heights, on a contractual basis as provided in this Agreement, maintenance, repair and replacement services for all Cottonwood Heights-owned Fire Hydrants situated within the Cottonwood Heights Water Service Area. For all purposes of this Agreement, the term "Fire Hydrant" shall mean and include the fire hydrant itself, the "T" connection, one or more valves, the branch line to the hydrant, the thrust restraints, and any associated appurtenances. "Fire Hydrant" shall include only Fire Hydrants owned by Cottonwood Heights, and shall not include any Fire Hydrants owned by other public or private parties, except as otherwise agreed by Salt Lake and Cottonwood Heights. Attached Exhibit A shows the current locations of the Cottonwood Heights-owned Fire Hydrants. Such maintenance, repair and replacement services shall be performed and accomplished by Salt Lake in the same manner as Salt Lake performs and accomplishes maintenance, repair and replacement services with respect to Salt Lake-owned Fire Hydrants. In the case of damage to Fire Hydrants caused by third parties, Cottonwood Heights agrees to assign to Salt Lake the right to pursue all claims against such third parties, and Salt Lake shall be entitled to retain all amounts so collected.

(b) Cottonwood Heights agrees to inspect or cause to be inspected each Fire Hydrant within the Cottonwood Heights Water Service Area on a periodic basis, and report to Salt Lake any conditions which appear to warrant maintenance, repair or replacement work. Except to the limited extent provided in subparagraphs (c) and (d) below, Salt Lake shall only be required to perform maintenance, repair or replacement services on Fire Hydrants so identified by Cottonwood Heights and for which notification is given to Salt Lake. Salt Lake and Cottonwood Heights shall cooperate with each other in monitoring the maintenance, repair and replacement status of all Cottonwood Heights Fire Hydrants so identified.

(c) It is the current practice of Salt Lake to open and operate each Fire Hydrant on the System at least once each year in order to fully flush the System as part of a systematic water quality maintenance program. During the term of this Agreement, Salt Lake shall open and operate each Fire Hydrant situated within the Cottonwood Heights Service Area in accordance with Salt Lake's then current System flushing practice, and annually shall provide to Cottonwood Heights a written report noting (i) what Fire Hydrants were so opened and operated, (ii) a description of any problems observed with specific Fire Hydrants, (iii) any repairs or replacements undertaken or planned, and (iv) such additional information concerning the performance of Salt Lake's duties under this Agreement as Cottonwood Heights reasonably may request from time to

time. Incidental to such practice, in the event Salt Lake observes conditions which render a Fire Hydrant inoperable, or which otherwise warrant maintenance, repair or replacement work, Salt Lake shall so notify Cottonwood Heights in the same manner as Salt Lake notifies the Salt Lake City Fire Department, and will schedule and perform the necessary work in accordance with Salt Lake's standard practice within Salt Lake. Except as described above, Salt Lake is under no duty and has no obligation to inspect Cottonwood Heights Fire Hydrants or independently schedule maintenance, repair or replacement work, and in any event such Salt Lake activities shall not absolve Cottonwood Heights of its primary obligation to inspect and operate all Fire Hydrants within the Cottonwood Heights Water Service Area.

(d) Whenever Salt Lake undertakes a water main replacement project in the Cottonwood Heights Water Service Area, Salt Lake agrees, in connection with such project, and without special direction by or authorization from Cottonwood Heights, to (i) replace or repair broken or otherwise defective Fire Hydrants, (ii) replace old Fire Hydrants which are otherwise functional but which do not meet then current standards, with new Fire Hydrants, and (iii) install new Fire Hydrants as necessary to achieve the then required density of Fire Hydrants (currently one Fire Hydrant every 500 feet).

(e) Salt Lake agrees to install such additional new Fire Hydrants within the Cottonwood Heights Service Area as Cottonwood Heights shall direct.

SECTION 2. Fees and Charges. (a) For the services described in Sections 1(a), (b), (c) and (d) (i), Cottonwood Heights shall pay to Salt Lake an annual flat fee, in an amount to be determined for each fiscal year, as provided herein. Such fee shall be fixed for the duration of each fiscal year, and shall not be subject to increase or decrease by either party based upon the actual cost of services provided during the applicable fiscal year; provided, however, that Cottonwood Heights shall be responsible for the actual costs incurred by Salt Lake for maintenance, repair or replacement work which is required due to the gross negligence or willful misconduct of Cottonwood Heights, or any agents of Cottonwood Heights. The annual flat fee shall be based on the flat fee charged by Salt Lake's Department of Public Utilities (the "Department"), to Salt Lake's Fire Department for similar services. For each fiscal year during the term of this Agreement, the fixed fee shall be an amount equal to (i) the average per Fire Hydrant fee charged by the Department to Salt Lake Fire Department for such fiscal year, increased to reflect the then applicable rate differential applied by Salt Lake for water service outside of its municipal boundaries, which fee shall be determined and reported by Salt Lake to Cottonwood Heights not later than the April 15th immediately preceding the beginning of such fiscal year, times (ii) the number of then existing Fire Hydrants within the Cottonwood Heights Water Service Area, based on an inventory to be performed by Cottonwood Heights on or after September 30 of each year, and reported to Salt Lake not later than January 1 of the following calendar year, which inventory shall be subject to confirmation by Salt Lake. By way of example, for the fiscal year beginning July 1, 2011, Salt Lake charged Salt Lake's Fire Department a flat fee of \$108,000 for 5,971 Salt Lake Fire Hydrants, representing an average fee of \$18.08 per Fire Hydrant. Applying the current rate differential of 35% to the average Salt Lake charge of \$18.08 results in an

average charge to Cottonwood Heights of \$24.41 per Fire Hydrant. Based on a current inventory of 1,123 Fire Hydrants within the Cottonwood Heights Water Service Area, the fixed annual fee payable by Cottonwood Heights for the fiscal year beginning July 1, 2011 will be \$27,412.43. The annual fee shall be due and payable within thirty (30) days after the later to occur of the first day of the relevant fiscal year, or the date the invoice is delivered by Salt Lake to Cottonwood Heights. The fee for fiscal year 2011 shall be due and payable upon the execution and delivery of this Agreement.

(b) For the services described in Section 1(d)(ii), 1(d)(iii) and (e), Cottonwood Heights shall pay to Salt Lake the actual cost of installing such new Fire Hydrants, including both materials and labor. In order to assist Cottonwood Heights in budgeting for such costs, Salt Lake shall notify Cottonwood Heights in advance of each water main replacement project scheduled by the Department during the next fiscal year. Such notice shall be delivered to Cottonwood Heights on or before the 1st day of February immediately preceding the beginning of the fiscal year for which such projects are scheduled. Such notice shall be given to Cottonwood Heights as a courtesy, and shall not preclude Salt Lake from undertaking additional, or different, water main replacement projects based on emergencies, or unforeseen circumstances, and Cottonwood Heights agrees to pay the actual Fire Hydrant installation costs, notwithstanding the lack of advance notice thereof.

SECTION 3. Water Sales. (a) Salt Lake agrees to make available to Cottonwood Heights, for fire-fighting purpose, through Fire Hydrants situated within the Cottonwood Heights Water Service Area, water available in the System in such quantities and at such pressures as the System is capable of producing at any given time or location.

(b) Cottonwood Heights recognizes that the System may from time to time be unable to deliver water at the times, at the locations, in the quantities and at the pressures required by Cottonwood Heights, and that Salt Lake cannot guarantee such water availability. However, and without creating a special contractual duty on the part of Salt Lake different from its duty to all other customers of Salt Lake within the Cottonwood Heights Water Service Area, Salt Lake represents that Salt Lake has and will continue to perform and accomplish the operation, maintenance, repair and replacement of the System within the Cottonwood Heights Water Service Area in accordance with generally applicable standards, policies, practices, procedures, rules, regulations, ordinances, statutes and other applicable law, as the same shall be in effect from time to time, and on the same basis as operation, maintenance, repair and replacement is performed and accomplished by Salt Lake with respect to the System within all other portions of Salt Lake's culinary water service area, both within and outside of Salt Lake. Notwithstanding the foregoing, this representation shall not apply to any areas governed by exchange agreements between Salt Lake and any mutual irrigation water companies, within which areas the operation, maintenance, repair and replacement of the System and any other facilities used to deliver culinary water shall continue to be covered by the terms of such exchange agreements.

(c) It is understood and agreed that Salt Lake has obligations to deliver water to the inhabitants, firms and corporations within the municipal boundaries of Salt Lake, and Salt Lake may sell water within the Cottonwood Heights Water Service Area, pursuant to Section 10-8-14, Utah Code Annotated, only to the extent such water is not required by Salt Lake or its inhabitants. In taking any actions to reduce or eliminate water sales within the Cottonwood Heights Water Service Area, Salt Lake shall not discriminate against Cottonwood Heights, and shall take such actions only to the extent the same actions are taken toward and are made generally applicable to other similarly situated surplus water customers of Salt Lake.

(d) The fixed annual fee referred to in Section 2 above includes a component to compensate Salt Lake for water usage under this Section.

SECTION 4. Term. Unless earlier terminated, this Agreement shall remain in effect for fifty (50) years. This Agreement may be terminated at any time by mutual consent of the parties, or upon thirty (30) days' prior written notice by either party based upon a violation of the terms hereof by the other party, which violation is not cured within such thirty (30) day period.

SECTION 5. Assignment. This Agreement may not be assigned by any party, without the prior written consent of the other parties.

SECTION 6. Entire Agreement. This Agreement contains the entire agreement between the parties and cannot be altered except in writing signed by both parties.

SECTION 7. Interlocal Act Requirements. In satisfaction of the requirements of the Interlocal Act in connection with this Agreement, the parties agree as follows:

(a) This Agreement shall be approved by each Party pursuant to Section 11-13-202.5 of the Interlocal Act;

(b) This Agreement shall be reviewed as to proper form and compliance with applicable law by a duly authorized attorney on behalf of each Party, pursuant to Section 11-13-202.5 of the Interlocal Act;

(c) A duly executed original counterpart of this Agreement shall be filed with keeper of records of each Party, pursuant to Section 11-13-209 of the Interlocal Act;

(d) Except as otherwise specifically provided herein, each Party shall be responsible for its own costs of any action taken pursuant to this Agreement, and for any financing of such costs;

(e) No separate legal entity is created by the terms of this Agreement. To the extent that this Agreement requires administration other than as set forth herein, it shall be administered by the mayor of Salt Lake and the manager of Cottonwood Heights;

(f) In satisfaction of Section 11-13-207(2) of the Interlocal Act, the parties agree that the acquisition, holding and disposition of real and personal property used in any joint undertaking shall be governed by applicable law.

(g) As provided in Section 11-13-219 of the Interlocal Act, the Parties agree that Salt Lake may, at its cost, cause a notice of this Agreement to be published in the Deseret News and the Salt Lake Tribune, which are hereby designated by Salt Lake and Cottonwood Heights as the official newspapers for all publications made under the Interlocal Act. Any person in interest may contest the legality of this Agreement for thirty (30) days after the publication of the notice of Agreement. After the thirty (30) days have passed, no one may contest the regularity, formality, or legality of the Agreement or any action performed or instrument issued under the authority of this Agreement for any cause whatsoever.

SECTION 8. Representations Regarding Ethical Standards For Salt Lake City Officers And Employees And Former Salt Lake City Officers and Employees. Cottonwood Heights represents that it has not (1) provided an illegal gift or payoff to a Salt Lake officer or employee or former Salt Lake officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in Salt Lake's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code; or (4) knowingly influenced, and hereby promises that it will not knowingly influence, a Salt Lake officer or employee or former Salt Lake officer or employee to breach any of the ethical standards set forth in Salt Lake's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code.

SECTION 10. No Third-Party Beneficiaries Intended. This Agreement and the covenants, promises, obligations and responsibilities contained herein are intended solely to establish the obligations and benefits of the respective parties hereto. No other persons are intended to benefit from or be bound by the mutual obligations of the parties and no third party may enforce the terms of this Agreement or rely on this Agreement in any action against either of the parties.

SECTION 11. Governmental Immunity Act. Each party hereto is a governmental entity subject to the Utah Governmental Immunity Act (the "Act") and the substantive and procedural protections thereof. Nothing in this Agreement is intended to or does waive any defense, limitation on actions, substantive protection or procedural requirement established under the Act affecting or benefiting either party with respect to either the performance of its obligations under the agreement or the rights of third parties.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have signed this Agreement this
_____ day of _____, 2011.

SALT LAKE CITY CORPORATION

By _____
MAYOR

ATTEST AND COUNTERSIGN:

RECORDER

STATE OF UTAH)
 : ss.
County of Salt Lake)

On the _____ day of _____, 2011, personally appeared before me
_____ and _____, who being by me duly sworn, did say that they
are the Mayor and City Recorder, of SALT LAKE CITY CORPORATION, and that the
foregoing instrument was signed in behalf of said municipal corporation by authority of a
resolution of its City Council; and said persons acknowledged to me that said municipal
corporation executed the same.

NOTARY PUBLIC, residing in
Salt Lake City, Utah

My Commission Expires:

COTTONWOOD HEIGHTS

By: _____
Mayor

ATTEST AND COUNTERSIGN:

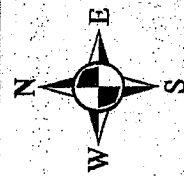
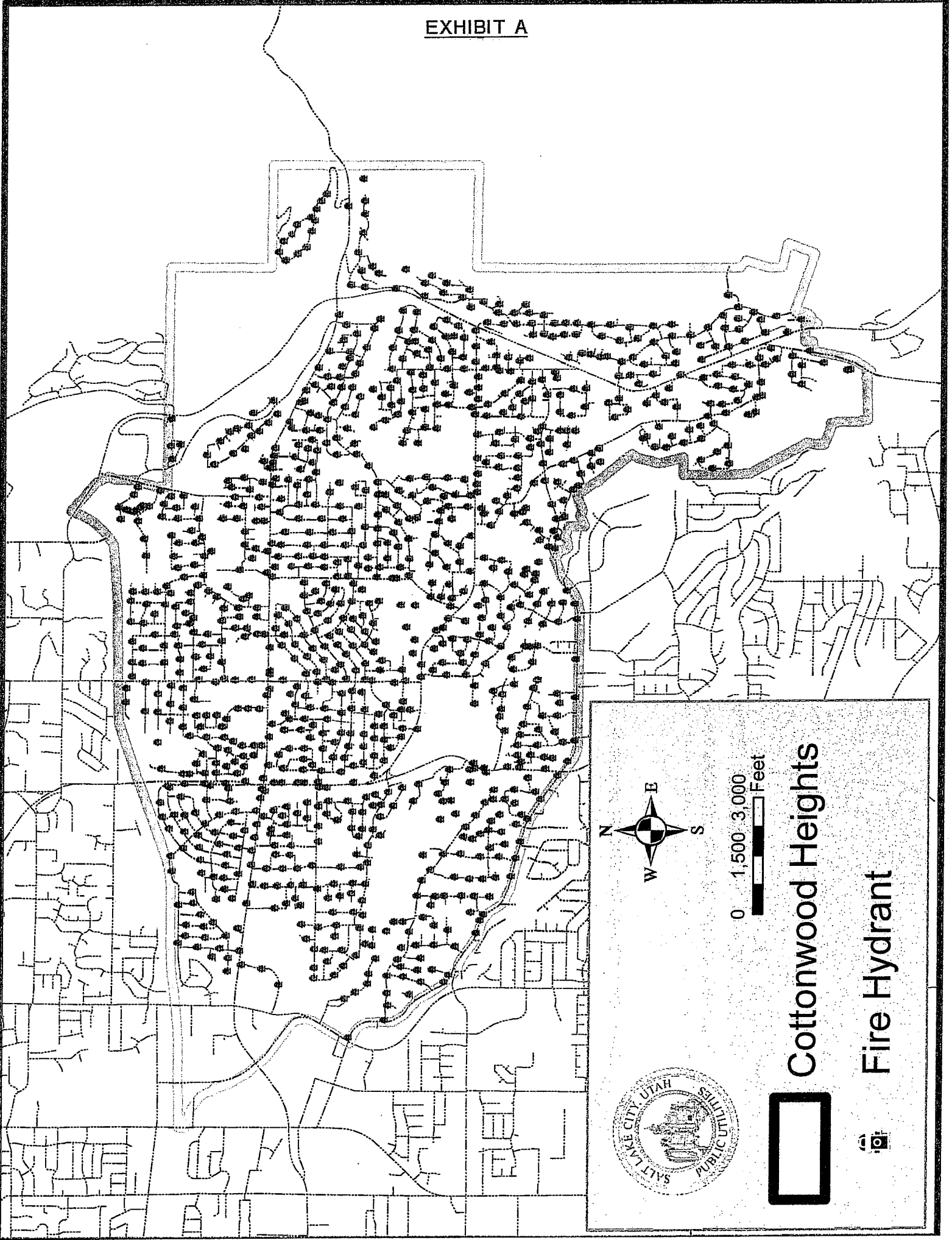
Recorder

STATE OF UTAH)
 : ss.
County of Salt Lake)

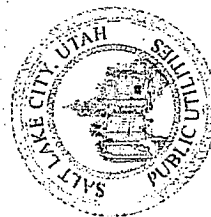
On the _____ day of _____, 2011, personally appeared before me Kelvyn H. Cullimore, Jr. and Linda W. Dunlavy, who being by me duly sworn, did say that they are the mayor and the recorder, respectively, of the city of COTTONWOOD HEIGHTS, and that the foregoing instrument was signed in behalf of said municipality by authority of a resolution of its City Council; and said persons acknowledged to me that said municipality executed the same.

NOTARY PUBLIC

EXHIBIT A



0 1,500 3,000 Feet



Cottonwood Heights

Fire Hydrant